

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 17, 2014

AMENDED IN SENATE JANUARY 14, 2014

AMENDED IN SENATE MAY 2, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 785

Introduced by Senator Wolk

(Principal coauthor: Assembly Member Levine)

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section ~~10186~~ 10187) to Chapter 1 of Part 2 of Division 2 of, to add Chapter 4 (commencing with Section 22160) to Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would authorize the Marin Healthcare District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Marin General Hospital. ~~The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature.~~ The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Marin Healthcare District.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to consolidate
- 2 existing design-build statutes and eliminate inconsistencies in
- 3 statutory language by adopting authority of general application to
- 4 identified agencies and repealing superseded sections.
- 5 SEC. 2. Section 14661 of the Government Code is repealed.
- 6 SEC. 3. Section 14661.1 of the Government Code is repealed.
- 7 SEC. 4. Section 32132.5 of the Health and Safety Code is
- 8 amended to read:
- 9 32132.5. (a) Notwithstanding Section 32132 or any other law,
- 10 upon approval by the board of directors of the Sonoma Valley
- 11 Health Care District or the Marin Healthcare District, as applicable,
- 12 the design-build procedure described in Chapter 4 (commencing
- 13 with Section 22160) of Part 3 of Division 2 of the Public Contract
- 14 Code may be used to assign contracts for the construction of a
- 15 building or improvements directly related to construction of a

1 hospital or health facility building at the Sonoma Valley Hospital
2 or the Marin General Hospital.

3 (b) For purposes of this section, all references in Chapter 4
4 (commencing with Section 22160) of Part 3 of Division 2 of the
5 Public Contract Code to “local agency” shall mean the Sonoma
6 Valley Health Care District and the Marin Healthcare District.

7 (c) A hospital building project utilizing the design-build process
8 authorized by subdivision (a) shall be reviewed and inspected in
9 accordance with the standards and requirements of the Alfred E.
10 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
11 (commencing with Section 129675) of Part 7 of Division 107).

12 SEC. 5. Article 6 (commencing with Section ~~10186~~) *10187*
13 is added to Chapter 1 of Part 2 of Division 2 of the Public Contract
14 Code, to read:

15
16 Article 6. State Agency Design-Build Projects

17
18 ~~10186.~~

19 *10187.* (a) The Legislature finds and declares that the
20 design-build method of project delivery, using a best value
21 procurement methodology, has been authorized for various
22 agencies that have reported benefits from such projects including
23 reduced project costs, expedited project completion, and design
24 features that are not achievable through the traditional
25 design-bid-build method.

26 (b) It is the intent of the Legislature that the following occur:

27 (1) This article provides general authorization for certain state
28 agencies to use design-build for projects, excluding projects on
29 the state highway system.

30 (2) This article shall not be deemed to provide a preference for
31 the design-build method over other procurement methodologies.

32 ~~10187.~~

33 *10187.5.* For purposes of this article, the following definitions
34 apply:

35 (a) “Best value” means a value determined by evaluation of
36 objective criteria related to price, features, functions, life-cycle
37 costs, experience, and past performance. A best value determination
38 may entail selection of the lowest priced technically acceptable
39 proposals or selection of the best proposal for a fixed price
40 established by the procuring agency, or it may consist of a tradeoff

~~between price and other specified factors.~~ *involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.*

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Department” means the Department of General Services and the Department of Corrections and Rehabilitation.

(d) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(e) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(f) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(g) “Director” means, with respect to procurements undertaken by the Department of General Services, the Director of General Services or, with respect to procurements undertaken by the Department of Corrections and Rehabilitation, the secretary of that department.

10188. (a) Notwithstanding any other law, the director, following notification to the State Public Works Board, may procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000), awarding the contract using either the low bid or best value, provided that this article shall not apply to any projects on the state highway system.

(b) The director shall develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity, that performs services for the department relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team. This conflict-of-interest policy shall apply to each department entering into design-build contracts authorized under this article.

10190. The director shall notify the State Public Works Board regarding the method to be used for selecting the design-build entity, prior to advertising the design-build project.

10191. The procurement process for the design-build projects shall progress as follows:

(a) (1) The director shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the department's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for any project. *The documents, however, may include operations during a training or transition period but shall not include long-term operations for any project.*

(b) Based on the documents prepared under subdivision (a), the director shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the department to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the director to inform interested parties of the contracting opportunity.

(2) ~~(A)~~ Significant factors that the department reasonably expects to consider in evaluating qualifications, including technical

1 design and construction expertise, skilled labor force availability,
2 *expertise*, and all other nonprice-related factors.

3 ~~(B) For purposes of subparagraph (A), skilled labor force~~
4 ~~availability shall be deemed satisfied by the existence of an~~
5 ~~agreement with a registered apprenticeship program, approved by~~
6 ~~the California Apprenticeship Council, that has graduated at least~~
7 ~~one apprentice in each of the preceding five years. This graduation~~
8 ~~requirement shall not apply to programs providing apprenticeship~~
9 ~~training for any craft that was first deemed by the federal~~
10 ~~Department of Labor and the Department of Industrial Relations~~
11 ~~to be an apprenticeable craft within the five years prior to the~~
12 ~~effective date of this article.~~

13 (3) A standard template request for statements of qualifications
14 prepared by the department. In preparing the standard template,
15 the department may consult with the construction industry, the
16 building trades and surety industry, and other agencies interested
17 in using the authorization provided by this article. The template
18 shall require the following information:

19 (A) If the design-build entity is a privately held corporation,
20 limited liability company, partnership, or joint venture, a listing
21 of all of the shareholders, partners, or members known at the time
22 of statement of qualification submission who will perform work
23 on the project.

24 (B) Evidence that the members of the design-build team have
25 completed, or demonstrated the experience, competency, capability,
26 and capacity to complete projects of similar size, scope, or
27 complexity, and that proposed key personnel have sufficient
28 experience and training to competently manage and complete the
29 design and construction of the project, and a financial statement
30 that ensures that the design-build entity has the capacity to
31 complete the project.

32 (C) The licenses, registration, and credentials required to design
33 and construct the project, including, but not limited to, information
34 on the revocation or suspension of any license, credential, or
35 registration.

36 (D) Evidence that establishes that the design-build entity has
37 the capacity to obtain all required payment and performance
38 bonding, liability insurance, and errors and omissions insurance.

39 (E) Information concerning workers' compensation experience
40 history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(4) (A) The information required under this subdivision shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the director that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(1) For purposes of this subdivision:

(A) "Apprenticeable occupation" means an occupation for which the chief had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

(B) "Skilled and trained workforce" means a workforce that meets all of the following conditions:

(i) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(ii) (I) As of January 1, 2016, at least 20 percent of the skilled journey persons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division

1 of Apprenticeship Standards pursuant to Section 3075 of the Labor
2 Code or located outside California and approved for federal
3 purposes pursuant to the apprenticeship regulations adopted by
4 the federal Secretary of Labor.

5 (II) As of January 1, 2017, at least 30 percent of the skilled
6 journey persons employed to perform work on the contract or
7 project by the entity and each of its subcontractors at every tier
8 are graduates of an apprenticeship program for the applicable
9 occupation that was either approved by the Chief of the Division
10 of Apprenticeship Standards pursuant to Section 3075 of the Labor
11 Code or located outside California and approved for federal
12 purposes pursuant to the apprenticeship regulations adopted by
13 the federal Secretary of Labor.

14 (III) As of January 1, 2018, at least 40 percent of the skilled
15 journey persons employed to perform work on the contract or
16 project by the entity and each of its subcontractors at every tier
17 are graduates of an apprenticeship program for the applicable
18 occupation that was either approved by the Chief of the Division
19 of Apprenticeship Standards pursuant to Section 3075 of the Labor
20 Code or located outside California and approved for federal
21 purposes pursuant to the apprenticeship regulations adopted by
22 the federal Secretary of Labor.

23 (IV) As of January 1, 2019, at least 50 percent of the skilled
24 journey persons employed to perform work on the contract or
25 project by the entity and each of its subcontractors at every tier
26 are graduates of an apprenticeship program for the applicable
27 occupation that was either approved by the Chief of the Division
28 of Apprenticeship Standards pursuant to Section 3075 of the Labor
29 Code or located outside California and approved for federal
30 purposes pursuant to the apprenticeship regulations adopted by
31 the federal Secretary of Labor.

32 (V) As of January 1, 2020, at least 60 percent of the skilled
33 journey persons employed to perform work on the contract or
34 project by the entity and each of its subcontractors at every tier
35 are graduates of an apprenticeship program for the applicable
36 occupation that was either approved by the Chief of the Division
37 of Apprenticeship Standards pursuant to Section 3075 of the Labor
38 Code or located outside California and approved for federal
39 purposes pursuant to the apprenticeship regulations adopted by
40 the federal Secretary of Labor.

1 (iii) *For an apprenticeable occupation in which no*
2 *apprenticeship program had been approved by the chief prior to*
3 *January 1, 1995, up to one-half of the graduation percentage*
4 *requirement in subclause (I) of clause (ii) may be satisfied by*
5 *skilled journeypersons who commenced working in the*
6 *apprenticeable occupation prior to the chief's approval of an*
7 *apprenticeship program for that occupation in the county in which*
8 *the project is located.*

9 (C) *"Skilled journey person" means a worker who either:*

10 (i) *Graduated from an apprenticeship program for the*
11 *applicable occupation that was approved by the chief or located*
12 *outside California and approved for federal purposes pursuant to*
13 *the apprenticeship regulations adopted by the federal Secretary*
14 *of Labor.*

15 (ii) *Has at least as many hours of on-the-job experience in the*
16 *applicable occupation as would be required to graduate from an*
17 *apprenticeship program for the applicable occupation that is*
18 *approved by the chief.*

19 (2) *An entity's commitment that a skilled and trained workforce*
20 *will be used to perform the project or contract may be established*
21 *by any of the following:*

22 (A) *The entity's agreement with the director that the entity and*
23 *its subcontractors at every tier will comply with the requirements*
24 *of this subdivision and that the entity will provide the director with*
25 *evidence, on a monthly basis while the project or contract is being*
26 *performed, that the entity and its subcontractors are complying*
27 *with the requirements of this subdivision.*

28 (B) *If the director has entered into a project labor agreement*
29 *that will bind all contractors and subcontractors performing work*
30 *on the project or contract and that includes the requirements of*
31 *this subdivision, the entity's agreement that it will become a party*
32 *to that project labor agreement.*

33 (C) *Evidence that the entity has entered into a project labor*
34 *agreement that includes the requirements of this subdivision and*
35 *that will bind the entity and all its subcontractors at every tier*
36 *performing the project or contract.*

37 ~~(e)~~

38 (d) *Based on the documents prepared as described in subdivision*
39 *(a), the director shall prepare a request for proposals that invites*
40 *prequalified or short-listed entities to submit competitive sealed*

1 proposals in the manner prescribed by the department. The request
2 for proposals shall include, but need not be limited to, the following
3 elements:

4 (1) Identification of the basic scope and needs of the project or
5 contract, the estimated cost of the project, the methodology that
6 will be used by the department to evaluate proposals, whether the
7 contract will be awarded on the basis of low bid or best value, and
8 any other information deemed necessary by the department to
9 inform interested parties of the contracting opportunity.

10 (2) Significant factors that the department reasonably expects
11 to consider in evaluating proposals, including, but not limited to,
12 cost or price and all nonprice-related factors.

13 (3) The relative importance or the weight assigned to each of
14 the factors identified in the request for proposals.

15 (4) Where a best value selection method is used, the department
16 may reserve the right to request proposal revisions and hold
17 discussions and negotiations with responsive proposers, in which
18 case the department shall so specify in the request for proposals
19 and shall publish separately or incorporate into the request for
20 proposals applicable procedures to be observed by the department
21 to ensure that any discussions or negotiations are conducted in
22 good faith.

23 ~~(d)~~

24 (e) For those projects utilizing low bid as the final selection
25 method, the competitive bidding process shall result in lump-sum
26 bids by the prequalified or short-listed design-build entities, and
27 awards shall be made to the design-build entity that is the lowest
28 responsible bidder.

29 ~~(e)~~

30 (f) For those projects utilizing best value as a selection method,
31 the design-build competition shall progress as follows:

32 (1) Competitive proposals shall be evaluated by using only the
33 criteria and selection procedures specifically identified in the
34 request for proposals. The following minimum factors, however,
35 shall be weighted as deemed appropriate by the department:

36 (A) Price, *unless a stipulated sum is specified*.

37 (B) Technical design and construction expertise.

38 (C) Life-cycle costs over 15 or more years.

1 (2) Pursuant to subdivision ~~(e)~~, (d), the department may hold
2 discussions or negotiations with responsive proposers using the
3 process articulated in the department's request for proposals.

4 (3) When the evaluation is complete, the responsive proposers
5 shall be ranked based on a determination of value provided,
6 provided that no more than three proposers are required to be
7 ranked.

8 (4) The award of the contract shall be made to the responsible
9 design-build entity whose proposal is determined by the director
10 to have offered the best value to the public.

11 (5) Notwithstanding any other provision of this code, upon
12 issuance of a contract award, the director shall publicly announce
13 its award, identifying the design-build entity to which the award
14 is made, along with a ~~written decision supporting its contract award~~
15 ~~and stating~~ *statement regarding* the basis of the award.

16 (6) ~~The written decision supporting~~ *statement regarding* the
17 director's contract award, described in paragraph (5), and the
18 contract file shall provide sufficient information to satisfy an
19 external audit.

20 10192. (a) The design-build entity shall provide payment and
21 performance bonds for the project in the form and in the amount
22 required by the director, and issued by a California admitted surety.
23 The amount of the payment bond shall not be less than the amount
24 of the performance bond.

25 (b) The design-build contract shall require errors and omissions
26 insurance coverage for the design elements of the project.

27 (c) The department shall develop a standard form of payment
28 and performance bond for its design-build projects.

29 10193. (a) The department, in each design-build request for
30 proposals, may identify specific types of subcontractors that must
31 be included in the design-build entity statement of qualifications
32 and proposal. All construction subcontractors that are identified
33 in the proposal shall be afforded all the protections of Chapter 4
34 (commencing with Section 4100) of Part 1.

35 (b) Following award of the design-build contract, the
36 design-build entity shall proceed as follows in awarding
37 construction subcontracts with a value exceeding one-half of 1
38 percent of the contract price allocable to construction work:

39 (1) Provide public notice of availability of work to be
40 subcontracted in accordance with the publication requirements

1 applicable to the competitive bidding process of the department,
2 including a fixed date and time on which qualifications statements,
3 bids, or proposals will be due.

4 (2) Establish reasonable qualification criteria and standards.

5 (3) Award the subcontract either on a best value basis or to the
6 lowest responsible bidder. The process may include prequalification
7 or short-listing. The foregoing process does not apply to
8 construction subcontractors listed in the original proposal.
9 Subcontractors awarded construction subcontracts under this
10 subdivision shall be afforded all the protections of Chapter 4
11 (commencing with Section 4100) of Part 1.

12 10194. (a) If the department elects to award a project pursuant
13 to this article, retention proceeds withheld by the department from
14 the design-build entity shall not exceed 5 percent if a performance
15 and payment bond, issued by an admitted surety insurer, is required
16 in the solicitation of bids.

17 (b) In a contract between the design-build entity and a
18 subcontractor, and in a contract between a subcontractor and any
19 subcontractor thereunder, the percentage of the retention proceeds
20 withheld may not exceed the percentage specified in the contract
21 between the department and the design-build entity. If the
22 design-build entity provides written notice to any subcontractor
23 that is not a member of the design-build entity, prior to or at the
24 time the bid is requested, that a bond may be required and the
25 subcontractor subsequently is unable or refuses to furnish a bond
26 to the design-build entity, then the design-build entity may withhold
27 retention proceeds in excess of the percentage specified in the
28 contract between the department and the design-build entity from
29 any payment made by the design-build entity to the subcontractor.

30 10195. Nothing in this article affects, expands, alters, or limits
31 any rights or remedies otherwise available at law.

32 ~~SEC. 6. Section 20133 of the Public Contract Code is repealed.~~

33 ~~SEC. 7. Section 20175.2 of the Public Contract Code is~~
34 ~~repealed.~~

35 ~~SEC. 8. Section 20193 of the Public Contract Code is repealed.~~

36 ~~SEC. 6. Section 20133 of the Public Contract Code is repealed.~~

37 ~~20133. (a) A county, with approval of the board of supervisors,~~
38 ~~may utilize an alternative procedure for bidding on construction~~
39 ~~projects in the county in excess of two million five hundred~~

1 thousand dollars (\$2,500,000) and may award the project using
2 either the lowest responsible bidder or by best value.

3 (b) (1) It is the intent of the Legislature to enable counties to
4 utilize design-build for buildings and county sanitation wastewater
5 treatment facilities. It is not the intent of the Legislature to
6 authorize this procedure for other infrastructure, including, but not
7 limited to, streets and highways, public rail transit, or water
8 resources facilities and infrastructures.

9 (2) The Legislature also finds and declares that utilizing a
10 design-build contract requires a clear understanding of the roles
11 and responsibilities of each participant in the design-build process.

12 (3) (A) For contracts for public works projects awarded prior
13 to January 1, 2012, if the board of supervisors elects to proceed
14 under this section, the board of supervisors shall establish and
15 enforce a labor compliance program containing the requirements
16 outlined in Section 1771.5 of the Labor Code, or it shall contract
17 with a third party to operate a labor compliance program containing
18 the requirements outlined in Section 1771.5 of the Labor Code.
19 This requirement shall not apply to any projects where the county
20 or the design-build entity has entered into a collective bargaining
21 agreement that binds all of the contractors performing work on the
22 projects.

23 (B) For contracts for public works projects awarded on or after
24 January 1, 2012, the project shall be subject to the requirements
25 of Section 1771.4 of the Labor Code.

26 (c) As used in this section:

27 (1) “Best value” means a value determined by objective criteria
28 related to price, features, functions, and life-cycle costs.

29 (2) “Design-build” means a procurement process in which both
30 the design and construction of a project are procured from a single
31 entity.

32 (3) “Design-build entity” means a partnership, corporation, or
33 other legal entity that is able to provide appropriately licensed
34 contracting, architectural, and engineering services as needed
35 pursuant to a design-build contract.

36 (4) “Project” means the construction of a building and
37 improvements directly related to the construction of a building,
38 and county sanitation wastewater treatment facilities, but does not
39 include the construction of other infrastructure, including, but not

1 ~~limited to, streets and highways, public rail transit, or water~~
2 ~~resources facilities and infrastructure.~~

3 ~~(d) Design-build projects shall progress in a four-step process,~~
4 ~~as follows:~~

5 ~~(1) (A) The county shall prepare a set of documents setting~~
6 ~~forth the scope of the project. The documents may include, but are~~
7 ~~not limited to, the size, type, and desired design character of the~~
8 ~~public improvement, performance specifications covering the~~
9 ~~quality of materials, equipment, and workmanship, preliminary~~
10 ~~plans or building layouts, or any other information deemed~~
11 ~~necessary to describe adequately the county's needs. The~~
12 ~~performance specifications and any plans shall be prepared by a~~
13 ~~design professional who is duly licensed and registered in~~
14 ~~California.~~

15 ~~(B) Any architect or engineer retained by the county to assist~~
16 ~~in the development of the project-specific documents shall not be~~
17 ~~eligible to participate in the preparation of a bid with any~~
18 ~~design-build entity for that project.~~

19 ~~(2) (A) Based on the documents prepared in paragraph (1), the~~
20 ~~county shall prepare a request for proposals that invites interested~~
21 ~~parties to submit competitive sealed proposals in the manner~~
22 ~~prescribed by the county. The request for proposals shall include,~~
23 ~~but is not limited to, the following elements:~~

24 ~~(i) Identification of the basic scope and needs of the project or~~
25 ~~contract, the expected cost range, and other information deemed~~
26 ~~necessary by the county to inform interested parties of the~~
27 ~~contracting opportunity, to include the methodology that will be~~
28 ~~used by the county to evaluate proposals and specifically if the~~
29 ~~contract will be awarded to the lowest responsible bidder.~~

30 ~~(ii) Significant objective factors that the county reasonably~~
31 ~~expects to consider in evaluating proposals, including cost or price~~
32 ~~and all nonprice-related factors.~~

33 ~~(iii) The relative importance of weight assigned to each of the~~
34 ~~factors identified in the request for proposals.~~

35 ~~(B) With respect to clause (iii) of subparagraph (A), if a~~
36 ~~nonweighted system is used, the agency shall specifically disclose~~
37 ~~whether all evaluation factors other than cost or price when~~
38 ~~combined are:~~

39 ~~(i) Significantly more important than cost or price.~~

40 ~~(ii) Approximately equal in importance to cost or price.~~

1 ~~(iii) Significantly less important than cost or price.~~

2 ~~(C) If the county chooses to reserve the right to hold discussions~~
3 ~~or negotiations with responsive bidders, it shall so specify in the~~
4 ~~request for proposal and shall publish separately or incorporate~~
5 ~~into the request for proposal applicable rules and procedures to be~~
6 ~~observed by the county to ensure that any discussions or~~
7 ~~negotiations are conducted in good faith.~~

8 ~~(3) (A) The county shall establish a procedure to prequalify~~
9 ~~design-build entities using a standard questionnaire developed by~~
10 ~~the county. In preparing the questionnaire, the county shall consult~~
11 ~~with the construction industry, including representatives of the~~
12 ~~building trades and surety industry. This questionnaire shall require~~
13 ~~information, including, but not limited to, all of the following:~~

14 ~~(i) If the design-build entity is a partnership, limited partnership,~~
15 ~~or other association, a listing of all of the partners, general partners,~~
16 ~~or association members known at the time of bid submission who~~
17 ~~will participate in the design-build contract, including, but not~~
18 ~~limited to, mechanical subcontractors.~~

19 ~~(ii) Evidence that the members of the design-build entity have~~
20 ~~completed, or demonstrated the experience, competency, capability,~~
21 ~~and capacity to complete, projects of similar size, scope, or~~
22 ~~complexity, and that proposed key personnel have sufficient~~
23 ~~experience and training to competently manage and complete the~~
24 ~~design and construction of the project, as well as a financial~~
25 ~~statement that assures the county that the design-build entity has~~
26 ~~the capacity to complete the project.~~

27 ~~(iii) The licenses, registration, and credentials required to design~~
28 ~~and construct the project, including information on the revocation~~
29 ~~or suspension of any license, credential, or registration.~~

30 ~~(iv) Evidence that establishes that the design-build entity has~~
31 ~~the capacity to obtain all required payment and performance~~
32 ~~bonding, liability insurance, and errors and omissions insurance.~~

33 ~~(v) Any prior serious or willful violation of the California~~
34 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
35 ~~(commencing with Section 6300) of Division 5 of the Labor Code,~~
36 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
37 ~~Law 91-596), settled against any member of the design-build entity,~~
38 ~~and information concerning workers' compensation experience~~
39 ~~history and worker safety program.~~

1 ~~(vi) Information concerning any debarment, disqualification,~~
2 ~~or removal from a federal, state, or local government public works~~
3 ~~project. Any instance in which an entity, its owners, officers, or~~
4 ~~managing employees submitted a bid on a public works project~~
5 ~~and were found to be nonresponsive, or were found by an awarding~~
6 ~~body not to be a responsible bidder.~~

7 ~~(vii) Any instance in which the entity, or its owners, officers,~~
8 ~~or managing employees, defaulted on a construction contract.~~

9 ~~(viii) Any violations of the Contractors' State License Law~~
10 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~
11 ~~Business and Professions Code), excluding alleged violations of~~
12 ~~federal or state law including the payment of wages, benefits,~~
13 ~~apprenticeship requirements, or personal income tax withholding,~~
14 ~~or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.~~
15 ~~3101 et seq.) withholding requirements settled against any member~~
16 ~~of the design-build entity.~~

17 ~~(ix) Information concerning the bankruptcy or receivership of~~
18 ~~any member of the design-build entity, including information~~
19 ~~concerning any work completed by a surety.~~

20 ~~(x) Information concerning all settled adverse claims, disputes,~~
21 ~~or lawsuits between the owner of a public works project and any~~
22 ~~member of the design-build entity during the five years preceding~~
23 ~~submission of a bid pursuant to this section, in which the claim,~~
24 ~~settlement, or judgment exceeds fifty thousand dollars (\$50,000).~~
25 ~~Information shall also be provided concerning any work completed~~
26 ~~by a surety during this period.~~

27 ~~(xi) In the case of a partnership or an association that is not a~~
28 ~~legal entity, a copy of the agreement creating the partnership or~~
29 ~~association and specifying that all partners or association members~~
30 ~~agree to be fully liable for the performance under the design-build~~
31 ~~contract.~~

32 ~~(xii) (I) Any instance in which the entity, or any of its members,~~
33 ~~owners, officers, or managing employees was, during the five years~~
34 ~~preceding submission of a bid pursuant to this section, determined~~
35 ~~by a court of competent jurisdiction to have submitted, or legally~~
36 ~~admitted for purposes of a criminal plea to have submitted either~~
37 ~~of the following:~~

38 ~~(ia) Any claim to any public agency or official in violation of~~
39 ~~the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).~~

1 ~~(ib) Any claim to any public official in violation of the~~
2 ~~California False Claims Act (Article 9 (commencing with Section~~
3 ~~12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the~~
4 ~~Government Code).~~

5 ~~(H) Information provided pursuant to this subdivision shall~~
6 ~~include the name and number of any case filed, the court in which~~
7 ~~it was filed, and the date on which it was filed. The entity may~~
8 ~~also provide further information regarding any such instance,~~
9 ~~including any mitigating or extenuating circumstances that the~~
10 ~~entity wishes the county to consider.~~

11 ~~(B) The information required pursuant to this subdivision shall~~
12 ~~be verified under oath by the entity and its members in the manner~~
13 ~~in which civil pleadings in civil actions are verified. Information~~
14 ~~that is not a public record pursuant to the California Public Records~~
15 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
16 ~~of Title 1 of the Government Code) shall not be open to public~~
17 ~~inspection.~~

18 ~~(4) The county shall establish a procedure for final selection of~~
19 ~~the design-build entity. Selection shall be based on either of the~~
20 ~~following criteria:~~

21 ~~(A) A competitive bidding process resulting in lump-sum bids~~
22 ~~by the prequalified design-build entities. Awards shall be made to~~
23 ~~the lowest responsible bidder.~~

24 ~~(B) A county may use a design-build competition based upon~~
25 ~~best value and other criteria set forth in paragraph (2). The~~
26 ~~design-build competition shall include the following elements:~~

27 ~~(i) Competitive proposals shall be evaluated by using only the~~
28 ~~criteria and selection procedures specifically identified in the~~
29 ~~request for proposal. However, the following minimum factors~~
30 ~~shall each represent at least 10 percent of the total weight of~~
31 ~~consideration given to all criteria factors: price, technical design,~~
32 ~~and construction expertise, life-cycle costs over 15 years or more,~~
33 ~~skilled labor force availability, and acceptable safety record.~~

34 ~~(ii) Once the evaluation is complete, the top three responsive~~
35 ~~bidders shall be ranked sequentially from the most advantageous~~
36 ~~to the least.~~

37 ~~(iii) The award of the contract shall be made to the responsible~~
38 ~~bidder whose proposal is determined, in writing, to be the most~~
39 ~~advantageous.~~

1 (iv) Notwithstanding any provision of this code, upon issuance
2 of a contract award, the county shall publicly announce its award,
3 identifying the contractor to whom the award is made, along with
4 a written decision supporting its contract award and stating the
5 basis of the award. The notice of award shall also include the
6 county's second and third ranked design-build entities.

7 (v) For purposes of this paragraph, "skilled labor force
8 availability" shall be determined by the existence of an agreement
9 with a registered apprenticeship program, approved by the
10 California Apprenticeship Council, which has graduated
11 apprentices in each of the preceding five years. This graduation
12 requirement shall not apply to programs providing apprenticeship
13 training for any craft that has been deemed by the Department of
14 Labor and the Department of Industrial Relations to be an
15 apprenticeable craft in the five years prior to enactment of this act.

16 (vi) For purposes of this paragraph, a bidder's "safety record"
17 shall be deemed "acceptable" if its experience modification rate
18 for the most recent three-year period is an average of 1.00 or less,
19 and its average total recordable injury/illness rate and average lost
20 work rate for the most recent three-year period does not exceed
21 the applicable statistical standards for its business category or if
22 the bidder is a party to an alternative dispute resolution system as
23 provided for in Section 3201.5 of the Labor Code.

24 (e) (1) Any design-build entity that is selected to design and
25 build a project pursuant to this section shall possess or obtain
26 sufficient bonding to cover the contract amount for nondesign
27 services, and errors and omission insurance coverage sufficient to
28 cover all design and architectural services provided in the contract.
29 This section does not prohibit a general or engineering contractor
30 from being designated the lead entity on a design-build entity for
31 the purposes of purchasing necessary bonding to cover the activities
32 of the design-build entity.

33 (2) Any payment or performance bond written for the purposes
34 of this section shall be written using a bond form developed by
35 the county.

36 (f) All subcontractors that were not listed by the design-build
37 entity in accordance with clause (i) of subparagraph (A) of
38 paragraph (3) of subdivision (d) shall be awarded by the
39 design-build entity in accordance with the design-build process
40 set forth by the county in the design-build package. All

1 subcontractors bidding on contracts pursuant to this section shall
2 be afforded the protections contained in Chapter 4 (commencing
3 with Section 4100) of Part 1. The design-build entity shall do both
4 of the following:

5 (1) Provide public notice of the availability of work to be
6 subcontracted in accordance with the publication requirements
7 applicable to the competitive bidding process of the county.

8 (2) Provide a fixed date and time on which the subcontracted
9 work will be awarded in accordance with the procedure established
10 pursuant to this section.

11 (g) Lists of subcontractors, bidders, and bid awards relating to
12 the project shall be submitted by the design-build entity to the
13 awarding body within 14 days of the award. These documents are
14 deemed to be public records and shall be available for public
15 inspection pursuant to this chapter and Article 1 (commencing
16 with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the
17 Government Code.

18 (h) The minimum performance criteria and design standards
19 established pursuant to paragraph (1) of subdivision (d) shall be
20 adhered to by the design-build entity. Any deviations from those
21 standards may only be allowed by written consent of the county.

22 (i) The county may retain the services of a design professional
23 or construction project manager, or both, throughout the course of
24 the project in order to ensure compliance with this section.

25 (j) Contracts awarded pursuant to this section shall be valid until
26 the project is completed.

27 (k) Nothing in this section is intended to affect, expand, alter,
28 or limit any rights or remedies otherwise available at law.

29 (l) (1) If the county elects to award a project pursuant to this
30 section, retention proceeds withheld by the county from the
31 design-build entity shall not exceed 5 percent if a performance and
32 payment bond, issued by an admitted surety insurer, is required in
33 the solicitation of bids.

34 (2) In a contract between the design-build entity and the
35 subcontractor, and in a contract between a subcontractor and any
36 subcontractor thereunder, the percentage of the retention proceeds
37 withheld may not exceed the percentage specified in the contract
38 between the county and the design-build entity. If the design-build
39 entity provides written notice to any subcontractor who is not a
40 member of the design-build entity, prior to or at the time the bid

1 is requested, that a bond may be required and the subcontractor
2 subsequently is unable or refuses to furnish a bond to the
3 design-build entity, then the design-build entity may withhold
4 retention proceeds in excess of the percentage specified in the
5 contract between the county and the design-build entity from any
6 payment made by the design-build entity to the subcontractor.

7 (m) Each county that elects to proceed under this section and
8 uses the design-build method on a public works project shall submit
9 to the Legislative Analyst's Office before September 1, 2013, a
10 report containing a description of each public works project
11 procured through the design-build process and completed after
12 November 1, 2009, and before August 1, 2013. The report shall
13 include, but shall not be limited to, all of the following information:

14 (1) The type of project.

15 (2) The gross square footage of the project.

16 (3) The design-build entity that was awarded the project.

17 (4) The estimated and actual length of time to complete the
18 project.

19 (5) The estimated and actual project costs.

20 (6) Whether the project was met or altered.

21 (7) The number and amount of project change orders.

22 (8) A description of any written protests concerning any aspect
23 of the solicitation, bid, proposal, or award of the design-build
24 project, including the resolution of the protests.

25 (9) An assessment of the prequalification process and criteria.

26 (10) An assessment of the effect of retaining 5-percent retention
27 on the project.

28 (11) A description of the Labor Force Compliance Program and
29 an assessment of the project impact, where required.

30 (12) A description of the method used to award the contract. If
31 best value was the method, the report shall describe the factors
32 used to evaluate the bid, including the weighting of each factor
33 and an assessment of the effectiveness of the methodology.

34 (13) An assessment of the project impact of "skilled labor force
35 availability."

36 (14) An assessment of the design-build dollar limits on county
37 projects. This assessment shall include projects where the county
38 wanted to use design-build and was precluded by the dollar
39 limitation. This assessment shall also include projects where the
40 best value method was not used due to dollar limitations.

1 ~~(15) An assessment of the most appropriate uses for the~~
2 ~~design-build approach.~~

3 ~~(n) Any county that elects not to use the authority granted by~~
4 ~~this section may submit a report to the Legislative Analyst's Office~~
5 ~~explaining why the county elected not to use the design-build~~
6 ~~method.~~

7 ~~(o) On or before January 1, 2014, the Legislative Analyst shall~~
8 ~~report to the Legislature on the use of the design-build method by~~
9 ~~counties pursuant to this section, including the information listed~~
10 ~~in subdivisions (m) and (p). The report may include~~
11 ~~recommendations for modifying or extending this section.~~

12 ~~(p) The Legislative Analyst shall complete a fact-based analysis~~
13 ~~of the use of the design-build method by counties pursuant to this~~
14 ~~section, utilizing the information provided pursuant to subdivision~~
15 ~~(m) and any independent information provided by the public or~~
16 ~~interested parties. The Legislative Analyst shall select a~~
17 ~~representative sample of projects under this section and review~~
18 ~~available public records and reports, media reports, and related~~
19 ~~information in its analysis. The Legislative Analyst shall compile~~
20 ~~the information required to be analyzed pursuant to this subdivision~~
21 ~~into a report, which shall be provided to the Legislature. The report~~
22 ~~shall include conclusions describing the actual cost of projects~~
23 ~~procured pursuant to this section, whether the project schedule~~
24 ~~was met or altered, and whether projects needed or used project~~
25 ~~change orders.~~

26 ~~(q) Except as provided in this section, this act shall not be~~
27 ~~construed to affect the application of any other law.~~

28 ~~(r) This section shall remain in effect only until July 1, 2016,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before July 1, 2016, deletes or extends that date.~~

31 *SEC. 7. Section 20175.2 of the Public Contract Code is*
32 *repealed.*

33 ~~20175.2. (a) (1) A city, with approval of the appropriate city~~
34 ~~council, may utilize an alternative procedure for bidding on~~
35 ~~building construction projects in the city in excess of one million~~
36 ~~dollars (\$1,000,000), except as provided in subdivision (p).~~

37 ~~(2) Cities may award the project using either the lowest~~
38 ~~responsible bidder or by best value.~~

39 ~~(b) (1) It is the intent of the Legislature to enable cities to utilize~~
40 ~~cost-effective options for building and modernizing public~~

1 facilities. The Legislature also recognizes the national trend,
2 including authorization in California, to allow public entities to
3 utilize design-build contracts as a project delivery method. It is
4 not the intent of the Legislature to authorize this procedure for
5 transportation facilities, including, but not limited to, roads and
6 bridges.

7 (2) The Legislature also finds and declares that utilizing a
8 design-build contract requires a clear understanding of the roles
9 and responsibilities of each participant in the design-build process.
10 The Legislature also finds that the cost-effective benefits to cities
11 are achieved by shifting the liability and risk for cost containment
12 and project completion to the design-build entity.

13 (3) It is the intent of the Legislature to provide an alternative
14 and optional procedure for bidding and building construction
15 projects for cities.

16 (4) The design-build approach may be used, but is not limited
17 to use, when it is anticipated that it will: reduce project cost,
18 expedite project completion, or provide design features not
19 achievable through the design-bid-build method.

20 (5) (A) For contracts for public works projects awarded prior
21 to January 1, 2012, if a city council elects to proceed under this
22 section, the city council shall establish and enforce a labor
23 compliance program containing the requirements outlined in
24 Section 1771.5 of the Labor Code, or it shall contract with a third
25 party to operate a labor compliance program containing the
26 requirements outlined in Section 1771.5 of the Labor Code. This
27 requirement shall not apply to any project where the city or the
28 design-build entity has entered into a collective bargaining
29 agreement or agreements that bind all of the contractors performing
30 work on the projects.

31 (B) For contracts for public works projects awarded on or after
32 January 1, 2012, the project shall be subject to the requirements
33 of Section 1771.4 of the Labor Code.

34 (c) As used in this section:

35 (1) “Best value” means a value determined by objectives relative
36 to price, features, functions, and life-cycle costs.

37 (2) “Design-build” means a procurement process in which both
38 the design and construction of a project are procured from a single
39 entity.

1 ~~(3) “Design-build entity” means a partnership, corporation, or~~
2 ~~other legal entity that is able to provide appropriately licensed~~
3 ~~contracting, architectural, and engineering services, as needed,~~
4 ~~pursuant to a design-build contract.~~

5 ~~(4) “Project” means the construction of a building and~~
6 ~~improvements directly related to the construction of a building,~~
7 ~~but does not include streets and highways, public rail transit, or~~
8 ~~water resource facilities and infrastructure.~~

9 ~~(d) Design-build projects shall progress in a four-step process,~~
10 ~~as follows:~~

11 ~~(1) (A) The city shall prepare a set of documents setting forth~~
12 ~~the scope of the project. The documents may include, but are not~~
13 ~~limited to, the size, type, and desired design character of the~~
14 ~~buildings and site, performance specifications covering the quality~~
15 ~~of materials, equipment, and workmanship, preliminary plans or~~
16 ~~building layouts, or any other information deemed necessary to~~
17 ~~describe adequately the city’s needs. The performance~~
18 ~~specifications and any plans shall be prepared by a design~~
19 ~~professional who is duly licensed and registered in California.~~

20 ~~(B) Any architect or engineer retained by the city to assist in~~
21 ~~the development of the project-specific documents shall not be~~
22 ~~eligible to participate in the preparation of a bid with any~~
23 ~~design-build entity for that project.~~

24 ~~(2) (A) Based on the documents prepared in paragraph (1), the~~
25 ~~city shall prepare a request for proposals that invites interested~~
26 ~~parties to submit competitive sealed proposals in the manner~~
27 ~~prescribed by the city. The request for proposals shall include, but~~
28 ~~is not limited to, the following elements:~~

29 ~~(i) Identification of the basic scope and needs of the project or~~
30 ~~contract, the expected cost range, and other information deemed~~
31 ~~necessary by the city to inform interested parties of the contracting~~
32 ~~opportunity, to include the methodology that will be used by the~~
33 ~~city to evaluate proposals, and specifically if the contract will be~~
34 ~~awarded to the lowest responsible bidder.~~

35 ~~(ii) Significant objective factors which the city reasonably~~
36 ~~expects to consider in evaluating proposals, including cost or price~~
37 ~~and all nonprice-related factors.~~

38 ~~(iii) The relative importance or weight assigned to each of the~~
39 ~~factors identified in the request for proposals.~~

~~(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors, other than cost or price, when combined are:~~

~~(i) Significantly more important than cost or price.~~

~~(ii) Approximately equal in importance to cost or price.~~

~~(iii) Significantly less important than cost or price.~~

~~(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately, or incorporate into the request for proposal, applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.~~

~~(3) (A) The city shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the city. In preparing the questionnaire, the city shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:~~

~~(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.~~

~~(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the city that the design-build entity has the capacity to complete the project.~~

~~(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.~~

~~(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.~~

~~(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1~~

1 (commencing with Section 6300) of Division 5 of the Labor Code
2 or the federal Occupational Safety and Health Act of 1970 (Public
3 Law 91-596) settled against any member of the design-build entity,
4 and information concerning workers' compensation experience
5 history and worker safety program.

6 (vi) Information concerning any debarment, disqualification,
7 or removal from a federal, state, or local government public works
8 project. Any instance where an entity, its owners, officers, or
9 managing employees submitted a bid on a public works project
10 and were found to be nonresponsive, or were found by an awarding
11 body not to be a responsible bidder.

12 (vii) Any instance where the entity, its owners, officers, or
13 managing employees defaulted on a construction contract.

14 (viii) Any violations of the Contractors State License Law
15 (Chapter 9 (commencing with Section 7000) of Division 3 of the
16 Business and Professions Code), excluding alleged violations of
17 federal or state law including the payment of wages, benefits,
18 apprenticeship requirements, or personal income tax withholding,
19 or of Federal Insurance Contribution Act (FICA; 26 U.S.C. Sec.
20 3101 et seq.) withholding requirements settled against any member
21 of the design-build entity.

22 (ix) Information concerning the bankruptcy or receivership of
23 any member of the design-build entity, including information
24 concerning any work completed by a surety.

25 (x) Information concerning all settled adverse claims, disputes,
26 or lawsuits between the owner of a public works project and any
27 member of the design-build entity during the five years preceding
28 submission of a bid pursuant to this section, in which the claim,
29 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
30 Information shall also be provided concerning any work completed
31 by a surety during this period.

32 (xi) In the case of a partnership or an association that is not a
33 legal entity, a copy of the agreement creating the partnership or
34 association and specifying that all partners or association members
35 agree to be fully liable for the performance under the design-build
36 contract.

37 (xii) (I) Any instance in which the entity, or any of its members,
38 owners, officers, or managing employees was, during the five years
39 preceding submission of a bid pursuant to this section, determined
40 by a court of competent jurisdiction to have submitted, or legally

1 admitted for purposes of a criminal plea to have submitted either
2 of the following:

3 (ia) Any claim to any public agency or official in violation of
4 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.);

5 (ib) Any claim to any public official in violation of the
6 California False Claims Act (Article 9 (commencing with Section
7 12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the
8 Government Code);

9 (II) Information provided pursuant to this subdivision shall
10 include the name and number of any case filed, the court in which
11 it was filed, and the date on which it was filed. The entity may
12 also provide further information regarding any such instance,
13 including any mitigating or extenuating circumstances that the
14 entity wishes the city to consider.

15 (B) The information required pursuant to this subdivision shall
16 be verified under oath by the entity and its members in the manner
17 in which civil pleadings in civil actions are verified. Information
18 that is not a public record pursuant to the California Public Records
19 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
20 of Title 1 of the Government Code) shall not be open to public
21 inspection.

22 (4) The city shall establish a procedure for final selection of the
23 design-build entity. Selection shall be based on either of the
24 following criteria:

25 (A) A competitive bidding process resulting in lump-sum bids
26 by the prequalified design-build entities. Awards shall be made to
27 the lowest responsible bidder.

28 (B) The city may use a design-build competition based upon
29 best value and other criteria set forth in paragraph (2) of
30 subdivision (d). The design-build competition shall include the
31 following elements:

32 (i) Competitive proposals shall be evaluated by using only the
33 criteria and selection procedures specifically identified in the
34 request for proposal. However, the following minimum factors
35 shall each represent at least 10 percent of the total weight of
36 consideration given to all criteria factors: price, technical design
37 and construction expertise, life-cycle costs over 15 years or more,
38 skilled labor force availability, and acceptable safety record.

1 (ii) ~~Once the evaluation is complete, the top three responsive~~
2 ~~bidders shall be ranked sequentially from the most advantageous~~
3 ~~to the least.~~

4 (iii) ~~The award of the contract shall be made to the responsible~~
5 ~~bidder whose proposal is determined, in writing, to be the most~~
6 ~~advantageous.~~

7 (iv) ~~Notwithstanding any provision of this code, upon issuance~~
8 ~~of a contract award, the city shall publicly announce its award,~~
9 ~~identifying the contractor to whom the award is made, along with~~
10 ~~a written decision supporting its contract award and stating the~~
11 ~~basis of the award. The notice of award shall also include the city's~~
12 ~~second and third ranked design-build entities.~~

13 (v) ~~For purposes of this paragraph, "skilled labor force~~
14 ~~availability" shall be determined by the existence of an agreement~~
15 ~~with a registered apprenticeship program, approved by the~~
16 ~~California Apprenticeship Council, which has graduated~~
17 ~~apprentices in each of the preceding five years. This graduation~~
18 ~~requirement shall not apply to programs providing apprenticeship~~
19 ~~training for any craft that has been deemed by the Department of~~
20 ~~Labor and the Department of Industrial Relations to be an~~
21 ~~apprenticeable craft in the five years prior to enactment of this act.~~

22 (vi) ~~For purposes of this paragraph, a bidder's "safety record"~~
23 ~~shall be deemed "acceptable" if its experience modification rate~~
24 ~~for the most recent three-year period is an average of 1.00 or less,~~
25 ~~and its average total recordable injury/illness rate and average lost~~
26 ~~work rate for the most recent three-year period does not exceed~~
27 ~~the applicable statistical standards for its business category, or if~~
28 ~~the bidder is a party to an alternative dispute resolution system, as~~
29 ~~provided for in Section 3201.5 of the Labor Code.~~

30 (e) ~~(1) Any design-build entity that is selected to design and~~
31 ~~build a project pursuant to this section shall possess or obtain~~
32 ~~sufficient bonding to cover the contract amount for nondesign~~
33 ~~services and errors and omissions insurance coverage sufficient~~
34 ~~to cover all design and architectural services provided in the~~
35 ~~contract. This section does not prohibit a general or engineering~~
36 ~~contractor from being designated the lead entity on a design-build~~
37 ~~entity for the purposes of purchasing necessary bonding to cover~~
38 ~~the activities of the design-build entity.~~

~~(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.~~

~~(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the city in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:~~

~~(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the city.~~

~~(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.~~

~~(g) Lists of subcontractors, bidders, and bid awards relating to the project shall be submitted by the design-build entity to the awarding body within 14 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.~~

~~(h) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the city.~~

~~(i) The city may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.~~

~~(j) Contracts awarded pursuant to this section shall be valid until the project is completed.~~

~~(k) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.~~

~~(l) (1) If the city elects to award a project pursuant to this section, retention proceeds withheld by the city from the design-build entity shall not exceed 5 percent if a performance and~~

1 payment bond, issued by an admitted surety insurer, is required in
2 the solicitation of bids:

3 ~~(2) In a contract between the design-build entity and the~~
4 ~~subcontractor, and in a contract between a subcontractor and any~~
5 ~~subcontractor thereunder, the percentage of the retention proceeds~~
6 ~~withheld may not exceed the percentage specified in the contract~~
7 ~~between the city and the design-build entity. If the design-build~~
8 ~~entity provides written notice to any subcontractor who is not a~~
9 ~~member of the design-build entity, prior to or at the time the bid~~
10 ~~is requested, that a bond may be required and the subcontractor~~
11 ~~subsequently is unable or refuses to furnish a bond to the~~
12 ~~design-build entity, then the design-build entity may withhold~~
13 ~~retention proceeds in excess of the percentage specified in the~~
14 ~~contract between the city and the design-build entity from any~~
15 ~~payment made by the design-build entity to the subcontractor.~~

16 ~~(m) Each city that elects to proceed under this section and uses~~
17 ~~the design-build method on a public works project shall submit to~~
18 ~~the Legislative Analyst's Office before December 1, 2014, a report~~
19 ~~containing a description of each public works project procured~~
20 ~~through the design-build process that is completed after January~~
21 ~~1, 2011, and before November 1, 2014. The report shall include,~~
22 ~~but shall not be limited to, all of the following information:~~

- 23 ~~(1) The type of project.~~
24 ~~(2) The gross square footage of the project.~~
25 ~~(3) The design-build entity that was awarded the project.~~
26 ~~(4) The estimated and actual project costs.~~
27 ~~(5) The estimated and actual length of time to complete the~~
28 ~~project.~~
29 ~~(6) A description of any written protests concerning any aspect~~
30 ~~of the solicitation, bid, proposal, or award of the design-build~~
31 ~~project, including the resolution of the protests.~~
32 ~~(7) An assessment of the prequalification process and criteria.~~
33 ~~(8) An assessment of the effect of retaining 5-percent retention~~
34 ~~on the project.~~
35 ~~(9) A description of the Labor Force Compliance Program and~~
36 ~~an assessment of the project impact, where required.~~
37 ~~(10) A description of the method used to award the contract. If~~
38 ~~the best value method was used, the report shall describe the factors~~
39 ~~used to evaluate the bid, including the weighting of each factor~~
40 ~~and an assessment of the effectiveness of the methodology.~~

1 ~~(11) An assessment of the project impact of “skilled labor force~~
2 ~~availability.”~~

3 ~~(12) An assessment of the most appropriate uses for the~~
4 ~~design-build approach.~~

5 ~~(n) Any city that elects not to use the authority granted by this~~
6 ~~section may submit a report to the Legislative Analyst’s Office~~
7 ~~explaining why the city elected not to use the design-build method.~~

8 ~~(o) On or before January 1, 2015, the Legislative Analyst’s~~
9 ~~Office shall report to the Legislature on the use of the design-build~~
10 ~~method by cities pursuant to this section, including the information~~
11 ~~listed in subdivision (m). The report may include recommendations~~
12 ~~for modifying or extending this section.~~

13 ~~(p) Except as provided in this section, nothing in this act shall~~
14 ~~be construed to affect the application of any other law.~~

15 ~~(q) Before January 1, 2011, the project limitation of one million~~
16 ~~dollars (\$1,000,000), as set forth in subdivision (a), shall not apply~~
17 ~~to any city in the Counties of Solano and Yolo, or to the Cities of~~
18 ~~Stanton and Victorville.~~

19 ~~(r) This section shall remain in effect only until January 1, 2016,~~
20 ~~and as of that date is repealed, unless a later enacted statute, that~~
21 ~~is enacted before January 1, 2016, deletes or extends that date.~~

22 ~~SEC. 8. Section 20193 of the Public Contract Code is repealed.~~

23 ~~20193. (a) (1) Notwithstanding any other law and subject to~~
24 ~~the limitations of this article, a qualified entity, with approval of~~
25 ~~its governing body, may utilize an alternative procedure on bidding~~
26 ~~on projects in excess of two million five hundred thousand dollars~~
27 ~~(\$2,500,000).~~

28 ~~(2) Only 20 design-build projects shall be authorized under this~~
29 ~~article.~~

30 ~~(3) A qualified entity may award a project using either the lowest~~
31 ~~responsible bidder or by best value.~~

32 ~~(4) For purposes of this article, “qualified entity” means an~~
33 ~~entity that meets both of the following:~~

34 ~~(A) The entity is any of the following:~~

35 ~~(i) A city.~~

36 ~~(ii) A county.~~

37 ~~(iii) A city and county.~~

38 ~~(iv) A special district.~~

39 ~~(B) The entity operates wastewater facilities, solid waste~~
40 ~~management facilities, or water recycling facilities.~~

~~(b) (1) For contracts for public works projects awarded prior to January 1, 2012, if a qualified entity elects to proceed under this section, the qualified entity shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the qualified entity or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.~~

~~(2) For contracts for public works projects awarded on or after January 1, 2012, the project shall be subject to the requirements of Section 1771.4 of the Labor Code.~~

~~(c) As used in this section:~~

~~(1) “Best value” means a value determined by objective criteria related to price, features, functions, small business contracting plans, past performance, and life-cycle costs.~~

~~(2) “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.~~

~~(3) “Design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.~~

~~(4) “Project” means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.~~

~~(d) Design-build projects shall progress in a four-step process, as follows:~~

~~(1) (A) The qualified entity shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the project and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or project layouts, or any other information deemed necessary to describe adequately the qualified entity’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.~~

1 ~~(B) Any architect or engineer retained by the qualified entity~~
2 ~~to assist in the development of the project specific documents shall~~
3 ~~not be eligible to participate in the preparation of a bid with any~~
4 ~~design-build entity for that project.~~

5 ~~(2) (A) Based on the documents prepared in paragraph (1), the~~
6 ~~qualified entity shall prepare a request for proposals that invites~~
7 ~~interested parties to submit competitive sealed proposals in the~~
8 ~~manner prescribed by the qualified entity. The request for proposals~~
9 ~~shall include, but is not limited to, the following elements:~~

10 ~~(i) Identification of the basic scope and needs of the project or~~
11 ~~contract, the expected cost range, and other information deemed~~
12 ~~necessary by the qualified entity to inform interested parties of the~~
13 ~~contracting opportunity, to include the methodology that will be~~
14 ~~used by the qualified entity to evaluate proposals and specifically~~
15 ~~if the contract will be awarded to the lowest responsible bidder.~~

16 ~~(ii) Significant factors that the qualified entity reasonably~~
17 ~~expects to consider in evaluating proposals, including cost or price~~
18 ~~and all nonprice-related factors.~~

19 ~~(iii) The relative importance of weight assigned to each of the~~
20 ~~factors identified in the request for proposals.~~

21 ~~(B) With respect to clause (iii) of subparagraph (A), if a~~
22 ~~nonweighted system is used, the qualified entity shall specifically~~
23 ~~disclose whether all evaluation factors other than cost or price~~
24 ~~when combined are:~~

25 ~~(i) Significantly more important than cost or price.~~

26 ~~(ii) Approximately equal in importance to cost or price.~~

27 ~~(iii) Significantly less important than cost or price.~~

28 ~~(C) If the qualified entity chooses to reserve the right to hold~~
29 ~~discussions or negotiations with responsive bidders, it shall so~~
30 ~~specify in the request for proposal and shall publish separately or~~
31 ~~incorporate into the request for proposal applicable rules and~~
32 ~~procedures to be observed by the qualified entity to ensure that~~
33 ~~any discussions or negotiations are conducted in good faith.~~

34 ~~(3) (A) The qualified entity shall establish a procedure to~~
35 ~~prequalify design-build entities using a standard questionnaire~~
36 ~~developed by the qualified entity. In preparing the questionnaire,~~
37 ~~the qualified entity shall consult with the construction industry,~~
38 ~~including representatives of the building trades and surety industry.~~
39 ~~This questionnaire shall require information including, but not~~
40 ~~limited to, all of the following:~~

1 (i) If the design-build entity is a partnership, limited partnership,
2 or other association, a listing of all of the partners, general partners,
3 or association members known at the time of bid submission who
4 will participate in the design-build contract, including, but not
5 limited to, mechanical subcontractors.

6 (ii) Evidence that the members of the design-build entity have
7 completed, or demonstrated the experience, competency, capability,
8 and capacity to complete projects of similar size, scope, or
9 complexity, and that proposed key personnel have sufficient
10 experience and training to competently manage and complete the
11 design and construction of the project, as well as a financial
12 statement that assures the special district that the design-build
13 entity has the capacity to complete the project.

14 (iii) The licenses, registration, and credentials required to design
15 and construct the project, including information on the revocation
16 or suspension of any license, credential, or registration.

17 (iv) Evidence that establishes that the design-build entity has
18 the capacity to obtain all required payment and performance
19 bonding, liability insurance, and errors and omissions insurance.

20 (v) Any prior serious or willful violation of the California
21 Occupational Safety and Health Act of 1973, contained in Part 1
22 (commencing with Section 6300) of Division 5 of the Labor Code
23 or the federal Occupational Safety and Health Act of 1970 (Public
24 Law 91-596), settled against any member of the design-build entity,
25 and information concerning workers' compensation experience
26 history and worker safety program.

27 (vi) Information concerning any debarment, disqualification,
28 or removal from a federal, state, or local government public works
29 project. Any instance where an entity, its owners, officers, or
30 managing employees submitted a bid on a public works project
31 and were found to be nonresponsive, or were found by an awarding
32 body not to be a responsible bidder.

33 (vii) Any instance where the entity, its owner, officers, or
34 managing employees defaulted on a construction contract.

35 (viii) Any violations of the Contractors' State License Law
36 (Chapter 9 (commencing with Section 7000) of Division 3 of the
37 Business and Professions Code), excluding alleged violations of
38 federal or state law including the payment of wages, benefits,
39 apprenticeship requirements, or personal income tax withholding,
40 or of Federal Insurance Contribution Act (FICA; 26 U.S.C. See.

1 3101 et seq.) withholding requirements settled against any member
2 of the design-build entity.

3 (ix) Information concerning the bankruptcy or receivership of
4 any member of the design-build entity, including information
5 concerning any work completed by a surety.

6 (x) Information concerning all settled adverse claims, disputes,
7 or lawsuits between the owner of a public works project and any
8 member of the design-build entity during the five years preceding
9 submission of a bid pursuant to this section, in which the claim,
10 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
11 Information shall also be provided concerning any work completed
12 by a surety during this period.

13 (xi) In the case of a partnership or other association, that is not
14 a legal entity, a copy of the agreement creating the partnership or
15 association and specifying that all partners or association members
16 agree to be fully liable for the performance under the design-build
17 contract.

18 (B) The information required pursuant to this subdivision shall
19 be verified under oath by the entity and its members in the manner
20 in which civil pleadings in civil actions are verified. Information
21 that is not a public record pursuant to the California Public Records
22 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
23 of Title 1 of the Government Code) shall not be open to public
24 inspection.

25 (4) The qualified entity shall establish a procedure for final
26 selection of the design-build entity. Selection shall be based on
27 either of the following criteria:

28 (A) A competitive bidding process resulting in lump-sum bids
29 by the prequalified design-build entities. Awards shall be made to
30 the lowest responsible bidder.

31 (B) A qualified entity may use a design-build competition based
32 upon best value and other criteria set forth in paragraph (2) of
33 subdivision (d). The design-build competition shall include the
34 following elements:

35 (i) Competitive proposals shall be evaluated by using only the
36 criteria and selection procedures specifically identified in the
37 request for proposal. However, the following minimum factors
38 shall each represent at least 10 percent of the total weight of
39 consideration given to all criteria factors; price, technical design

1 and construction expertise, life-cycle costs over 15 years or more,
2 skilled labor force availability, and acceptable safety record.

3 (ii) ~~Once the evaluation is complete, the top three responsive~~
4 ~~bidders shall be ranked sequentially from the most advantageous~~
5 ~~to the least.~~

6 (iii) ~~The award of the contract shall be made to the responsible~~
7 ~~bidder whose proposal is determined, in writing, to be the most~~
8 ~~advantageous.~~

9 (iv) ~~Notwithstanding any provision of this code, upon issuance~~
10 ~~of a contract award, the qualified entity shall publicly announce~~
11 ~~its award, identifying the contractor to which the award is made,~~
12 ~~along with a written decision supporting its contract award and~~
13 ~~stating the basis of the award. The notice of award shall also~~
14 ~~include the qualified entity's second and third ranked design-build~~
15 ~~entities.~~

16 (v) ~~For purposes of this paragraph, "skilled labor force~~
17 ~~availability" shall be determined by the existence of an agreement~~
18 ~~with a registered apprenticeship program, approved by the~~
19 ~~California Apprenticeship Council, which has graduated~~
20 ~~apprentices in each of the preceding five years. This graduation~~
21 ~~requirement shall not apply to programs providing apprenticeship~~
22 ~~training for any craft that has been deemed by the Department of~~
23 ~~Labor and the Department of Industrial Relations to be an~~
24 ~~apprenticeable craft in the five years prior to enactment of this act.~~

25 (vi) ~~For purposes of this paragraph, a bidder's "safety record"~~
26 ~~shall be deemed "acceptable" if their experience modification rate~~
27 ~~for the most recent three-year period is an average of 1.00 or less,~~
28 ~~and their average total recordable injury/illness rate and average~~
29 ~~lost work rate for the most recent three-year period does not exceed~~
30 ~~the applicable statistical standards for its business category, or if~~
31 ~~the bidder is a party to an alternative dispute resolution system as~~
32 ~~provided for in Section 3201.5 of the Labor Code.~~

33 (e) (1) ~~Any design-build entity that is selected to design and~~
34 ~~build a project pursuant to this section shall possess or obtain~~
35 ~~sufficient bonding to cover the contract amount for nondesign~~
36 ~~services, and errors and omissions insurance coverage sufficient~~
37 ~~to cover all design and architectural services provided in the~~
38 ~~contract. This section does not prohibit a general or engineering~~
39 ~~contractor from being designated the lead entity on a design-build~~

1 entity for the purposes of purchasing necessary bonding to cover
2 the activities of the design-build entity.

3 (2) Any payment or performance bond written for the purposes
4 of this section shall be written using a bond form developed by
5 the qualified entity.

6 (f) All subcontractors that were not listed by the design-build
7 entity in accordance with clause (i) of subparagraph (A) of
8 paragraph (3) of subdivision (d) shall be awarded by the
9 design-build entity in accordance with the design-build process
10 set forth by the qualified entity in the design-build package. All
11 subcontractors bidding on contracts pursuant to this section shall
12 be afforded the protections contained in Chapter 4 (commencing
13 with Section 4100) of Part 1. The design-build entity shall do both
14 of the following:

15 (1) Provide public notice of the availability of work to be
16 subcontracted in accordance with the publication requirements
17 applicable to the competitive bidding process of the qualified
18 entity.

19 (2) Provide a fixed date and time on which the subcontracted
20 work will be awarded in accordance with the procedure established
21 pursuant to this section.

22 (g) The minimum performance criteria and design standards
23 established pursuant to paragraph (1) of subdivision (d) shall be
24 adhered to by the design-build entity. Any deviations from those
25 standards may only be allowed by written consent of the qualified
26 entity.

27 (h) The qualified entity may retain the services of a design
28 professional or construction project manager, or both, throughout
29 the course of the project in order to ensure compliance with this
30 section.

31 (i) Contracts awarded pursuant to this section shall be valid until
32 the project is completed.

33 (j) Nothing in this section is intended to affect, expand, alter,
34 or limit any rights or remedies otherwise available at law.

35 (k) (1) If the qualified entity elects to award a project pursuant
36 to this section, retention proceeds withheld by the qualified entity
37 from the design-build entity shall not exceed 5 percent if a
38 performance and payment bond, issued by an admitted surety
39 insurer, is required in the solicitation of bids.

1 ~~(2) In a contract between the design-build entity and the~~
2 ~~subcontractor, and in a contract between a subcontractor and any~~
3 ~~subcontractor thereunder, the percentage of the retention proceeds~~
4 ~~withheld may not exceed the percentage specified in the contract~~
5 ~~between the qualified entity and the design-build entity. If the~~
6 ~~design-build entity provides written notice to any subcontractor~~
7 ~~who is not a member of the design-build entity, prior to or at the~~
8 ~~time the bid is requested, that a bond may be required and the~~
9 ~~subcontractor subsequently is unable or refuses to furnish a bond~~
10 ~~to the design-build entity, then the design-build entity may withhold~~
11 ~~retention proceeds in excess of the percentage specified in the~~
12 ~~contract between the qualified entity and the design-build entity~~
13 ~~from any payment made by the design-build entity to the~~
14 ~~subcontractor.~~

15 ~~(f) Each qualified entity that elects to proceed under this section~~
16 ~~and uses the design-build method on a public works project shall~~
17 ~~do both of the following:~~

18 ~~(1) Notify the Legislative Analyst's Office upon initiation of~~
19 ~~the project and upon completion of the project.~~

20 ~~(2) Submit to the Legislative Analyst's Office, upon completion~~
21 ~~of the project, a report containing a description of the public works~~
22 ~~project procured through the design-build process pursuant to this~~
23 ~~section and completed after January 1, 2009. The report shall~~
24 ~~include, but shall not be limited to, all of the following information:~~

25 ~~(A) The type of project.~~

26 ~~(B) The gross square footage of the project.~~

27 ~~(C) The design-build entity that was awarded the project.~~

28 ~~(D) The estimated and actual project costs.~~

29 ~~(E) A description of any written protests concerning any aspect~~
30 ~~of the solicitation, bid, proposal, or award of the design-build~~
31 ~~project, including the resolution of the protests.~~

32 ~~(F) An assessment of the prequalification process and criteria.~~

33 ~~(G) An assessment of the effect of retaining 5-percent retention~~
34 ~~on the project.~~

35 ~~(H) A description of the Labor Force Compliance Program and~~
36 ~~an assessment of the project impact, where required.~~

37 ~~(I) A description of the method used to award the contract. If~~
38 ~~best value was the method, the report shall describe the factors~~
39 ~~used to evaluate the bid, including the weighting of each factor~~
40 ~~and an assessment of the effectiveness of the methodology.~~

1 (J) ~~An assessment of the project impact of “skilled labor force~~
2 ~~availability.”~~

3 (K) ~~An assessment of the most appropriate uses for the~~
4 ~~design-build approach.~~

5 (m) ~~Any qualified entity that elects not to use the authority~~
6 ~~granted by this section may submit a report to the Legislative~~
7 ~~Analyst’s Office explaining why the qualified entity elected to not~~
8 ~~use the design-build method.~~

9 (n) ~~(1) In order to comply with paragraph (2) of subdivision~~
10 ~~(a), the Office of Planning and Research is required to maintain~~
11 ~~the list of entities that have applied and are eligible to be qualified~~
12 ~~for this authority.~~

13 ~~(2) Each entity that is interested in proceeding under the~~
14 ~~authority in this section must apply to the Office of Planning and~~
15 ~~Research.~~

16 (A) ~~The application to proceed must be in writing.~~

17 (B) ~~An entity must have complied with the California~~
18 ~~Environmental Quality Act review process pursuant to Division~~
19 ~~13 (commencing with Section 21000) of the Public Resources~~
20 ~~Code prior to its application, and must include its approved notice~~
21 ~~of determination or notice of completion in its application.~~

22 ~~(3) The Office of Planning and Research must approve or deny~~
23 ~~an application, in writing, within 30 days. The authority to deny~~
24 ~~an application shall only be exercised if the conditions set forth in~~
25 ~~either or both paragraph (2) of subdivision (a) and subparagraph~~
26 ~~(B) of paragraph (2) of this subdivision have not been satisfied.~~

27 ~~(4) An entity utilizing this section must, after it determines it~~
28 ~~no longer is interested in using this authority, notify the Office of~~
29 ~~Planning and Research in writing within 30 days of its~~
30 ~~determination. Upon notification, the Office of Planning and~~
31 ~~Research may contact any previous applicants, denied pursuant to~~
32 ~~paragraph (2) of subdivision (a), to inform them of the availability~~
33 ~~to proceed under this section.~~

34 (o) ~~The Legislative Analyst shall report to the Legislature on~~
35 ~~the use of the design-build method by qualified entities pursuant~~
36 ~~to this section, including the information listed in subdivision (l).~~
37 ~~The report may include recommendations for modifying or~~
38 ~~extending this section, and shall be submitted on either of the~~
39 ~~following dates, whichever occurs first:~~

1 ~~(1) Within one year of the completion of the 20 projects, if the~~
2 ~~projects are completed prior to January 1, 2019.~~

3 ~~(2) No later than January 1, 2020.~~

4 SEC. 9. Section 20301.5 of the Public Contract Code is
5 repealed.

6 SEC. 10. Article 22 (commencing with Section 20360) of
7 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
8 repealed.

9 ~~SEC. 11. Section 20688.6 of the Public Contract Code is~~
10 ~~repealed.~~

11 *SEC. 11. Section 20688.6 of the Public Contract Code is*
12 *repealed.*

13 ~~20688.6. (a) (1) Notwithstanding any other law, an agency,~~
14 ~~with approval of its duly constituted board in a public hearing,~~
15 ~~may utilize an alternative procedure for bidding on projects in the~~
16 ~~community in excess of one million dollars (\$1,000,000) and may~~
17 ~~award the project using either the lowest responsible bidder or by~~
18 ~~best value.~~

19 ~~(2) Only 10 design-build projects shall be authorized under this~~
20 ~~section.~~

21 ~~(b) (1) It is the intent of the Legislature to enable entities as~~
22 ~~provided in Part 1 (commencing with Section 33000) of Division~~
23 ~~24 of the Health and Safety Code to utilize design-build for those~~
24 ~~infrastructure improvements authorized in Sections 33421, 33445,~~
25 ~~and 33445.1 of the Health and Safety Code and subject to the~~
26 ~~limitations on that authority described in Section 33421.1 of the~~
27 ~~Health and Safety Code.~~

28 ~~(2) The Legislature also finds and declares that utilizing a~~
29 ~~design-build contract requires a clear understanding of the roles~~
30 ~~and responsibilities of each participant in the design-build process.~~

31 ~~(3) (A) For contracts for public works projects awarded prior~~
32 ~~to January 1, 2012, if the board elects to proceed under this section,~~
33 ~~the board shall establish and enforce a labor compliance program~~
34 ~~containing the requirements outlined in Section 1771.5 of the Labor~~
35 ~~Code, or it shall contract with a third party to operate a labor~~
36 ~~compliance program containing the requirements outlined in~~
37 ~~Section 1771.5 of the Labor Code. This requirement shall not apply~~
38 ~~to projects where the agency or the design-build entity has entered~~
39 ~~into a collective bargaining agreement or agreements that bind all~~
40 ~~of the contractors performing work on the projects.~~

~~(B) For contracts for public works projects awarded on or after January 1, 2012, the project shall be subject to the requirements of Section 1771.4 of the Labor Code.~~

~~(c) As used in this section:~~

~~(1) “Best value” means a value determined by objective criteria related to price, features, functions, and life-cycle costs.~~

~~(2) “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.~~

~~(3) “Design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.~~

~~(4) “Project” means those infrastructure improvements authorized in Sections 33421, 33445, and 33445.1 of the Health and Safety Code and subject to the limitations and conditions on that authority described in Article 10 (commencing with Section 33420) and Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.~~

~~(d) Design-build projects shall progress in a four-step process; as follows:~~

~~(1) (A) The agency shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the agency’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.~~

~~(B) Any architect or engineer retained by the agency to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.~~

~~(2) (A) Based on the documents prepared as described in paragraph (1), the agency shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the agency. The request for proposals shall include, but is not limited to, the following elements:~~

1 (i) Identification of the basic scope and needs of the project or
2 contract, the expected cost range, and other information deemed
3 necessary by the agency to inform interested parties of the
4 contracting opportunity, to include the methodology that will be
5 used by the agency to evaluate proposals and specifically if the
6 contract will be awarded to the lowest responsible bidder.

7 (ii) Significant factors that the agency reasonably expects to
8 consider in evaluating proposals, including cost or price and all
9 nonprice-related factors.

10 (iii) The relative importance of the weight assigned to each of
11 the factors identified in the request for proposals.

12 (B) With respect to clause (iii) of subparagraph (A), if a
13 nonweighted system is used, the agency shall specifically disclose
14 whether all evaluation factors other than cost or price when
15 combined are:

16 (i) Significantly more important than cost or price.

17 (ii) Approximately equal in importance to cost or price.

18 (iii) Significantly less important than cost or price.

19 (C) If the agency chooses to reserve the right to hold discussions
20 or negotiations with responsive bidders, it shall so specify in the
21 request for proposal and shall publish separately or incorporate
22 into the request for proposal applicable rules and procedures to be
23 observed by the agency to ensure that any discussions or
24 negotiations are conducted in good faith.

25 (3) (A) The agency shall establish a procedure to prequalify
26 design-build entities using a standard questionnaire developed by
27 the agency. In preparing the questionnaire, the agency shall consult
28 with the construction industry, including representatives of the
29 building trades and surety industry. This questionnaire shall require
30 information including, but not limited to, all of the following:

31 (i) If the design-build entity is a partnership, limited partnership,
32 or other association, a listing of all of the partners, general partners,
33 or association members known at the time of bid submission who
34 will participate in the design-build contract, including, but not
35 limited to, mechanical subcontractors.

36 (ii) Evidence that the members of the design-build entity have
37 completed, or demonstrated the experience, competency, capability,
38 and capacity to complete, projects of similar size, scope, or
39 complexity, and that proposed key personnel have sufficient
40 experience and training to competently manage and complete the

1 ~~design and construction of the project, as well as a financial~~
2 ~~statement that assures the agency that the design-build entity has~~
3 ~~the capacity to complete the project.~~

4 (iii) ~~The licenses, registration, and credentials required to design~~
5 ~~and construct the project, including information on the revocation~~
6 ~~or suspension of any license, credential, or registration.~~

7 (iv) ~~Evidence that establishes that the design-build entity has~~
8 ~~the capacity to obtain all required payment and performance~~
9 ~~bonding, liability insurance, and errors and omissions insurance.~~

10 (v) ~~Any prior serious or willful violation of the California~~
11 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
12 ~~(commencing with Section 6300) of Division 5 of the Labor Code,~~
13 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
14 ~~Law 91-596), settled against any member of the design-build entity,~~
15 ~~and information concerning workers' compensation experience~~
16 ~~history and worker safety program.~~

17 (vi) ~~Information concerning any debarment, disqualification,~~
18 ~~or removal from a federal, state, or local government public works~~
19 ~~project. Any instance in which an entity, its owners, officers, or~~
20 ~~managing employees submitted a bid on a public works project~~
21 ~~and were found to be nonresponsive, or were found by an awarding~~
22 ~~body not to be a responsible bidder.~~

23 (vii) ~~Any instance in which the entity, or its owners, officers,~~
24 ~~or managing employees, defaulted on a construction contract.~~

25 (viii) ~~Any violations of the Contractors' State License Law~~
26 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~
27 ~~Business and Professions Code), including alleged violations of~~
28 ~~federal or state law including the payment of wages, benefits,~~
29 ~~apprenticeship requirements, or personal income tax withholding,~~
30 ~~or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.~~
31 ~~3101 et seq.) withholding requirements settled against any member~~
32 ~~of the design-build entity.~~

33 (ix) ~~Information concerning the bankruptcy or receivership of~~
34 ~~any member of the design-build entity, including information~~
35 ~~concerning any work completed by a surety.~~

36 (x) ~~Information concerning all settled adverse claims, disputes,~~
37 ~~or lawsuits between the owner of a public works project and any~~
38 ~~member of the design-build entity during the five years preceding~~
39 ~~submission of a bid pursuant to this section, in which the claim,~~
40 ~~settlement, or judgment exceeds fifty thousand dollars (\$50,000).~~

1 Information shall also be provided concerning any work completed
2 by a surety during this period.

3 (xi) In the case of a partnership, joint venture, or an association
4 that is not a legal entity, a copy of the agreement creating the
5 partnership or association and specifying that all general partners,
6 joint venturers, or association members agree to be fully liable for
7 the performance under the design-build contract.

8 (B) The information required pursuant to this subdivision shall
9 be verified under oath by the entity and its members in the manner
10 in which civil pleadings in civil actions are verified. Information
11 that is not a public record pursuant to the California Public Records
12 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
13 of Title 1 of the Government Code) shall not be open to public
14 inspection.

15 (4) The agency shall establish a procedure for final selection of
16 the design-build entity. Selection shall be based on either of the
17 following criteria:

18 (A) A competitive bidding process resulting in lump-sum bids
19 by the prequalified design-build entities. Awards shall be made to
20 the lowest responsible bidder.

21 (B) An agency may use a design-build competition based upon
22 best value and other criteria set forth in paragraph (2). The
23 design-build competition shall include the following elements:

24 (i) Competitive proposals shall be evaluated by using only the
25 criteria and selection procedures specifically identified in the
26 request for proposal. However, the following minimum factors
27 shall each represent at least 10 percent of the total weight of
28 consideration given to all criteria factors: price, technical design
29 and construction expertise, life-cycle costs over 15 years or more,
30 skilled labor force availability, and acceptable safety record.

31 (ii) Once the evaluation is complete, the top three responsive
32 bidders shall be ranked sequentially from the most advantageous
33 to the least.

34 (iii) The award of the contract shall be made to the responsible
35 bidder whose proposal is determined, in writing, to be the most
36 advantageous.

37 (iv) Notwithstanding any provision of this code, upon issuance
38 of a contract award, the agency shall publicly announce its award,
39 identifying the contractor to whom the award is made, along with
40 a written decision supporting its contract award and stating the

1 basis of the award. The notice of award shall also include the
2 agency's second- and third-ranked design-build entities.

3 (v) For purposes of this paragraph, skilled labor force availability
4 shall be determined by the existence of an agreement with a
5 registered apprenticeship program, approved by the California
6 Apprenticeship Council, which has graduated apprentices in each
7 of the preceding five years. This graduation requirement shall not
8 apply to programs providing apprenticeship training for any craft
9 that has been deemed by the Department of Labor and the
10 Department of Industrial Relations to be an apprenticeable craft
11 in the five years prior to enactment of this act.

12 (vi) For purposes of this paragraph, a bidder's safety record
13 shall be deemed acceptable if its experience modification rate for
14 the most recent three-year period is an average of 1.00 or less, and
15 its average total recordable injury/illness rate and average lost
16 work rate for the most recent three-year period does not exceed
17 the applicable statistical standards for its business category or if
18 the bidder is a party to an alternative dispute resolution system as
19 provided for in Section 3201.5 of the Labor Code.

20 (e) (1) Any design-build entity that is selected to design and
21 build a project pursuant to this section shall possess or obtain
22 sufficient bonding to cover the contract amount for nondesign
23 services, and errors and omission insurance coverage sufficient to
24 cover all design and architectural services provided in the contract.
25 This section does not prohibit a general or engineering contractor
26 from being designated the lead entity on a design-build entity for
27 the purposes of purchasing necessary bonding to cover the activities
28 of the design-build entity.

29 (2) Any payment or performance bond written for the purposes
30 of this section shall be written using a bond form developed by
31 the agency.

32 (f) All subcontractors that were not listed by the design-build
33 entity in accordance with clause (i) of subparagraph (A) of
34 paragraph (3) of subdivision (d) shall be awarded by the
35 design-build entity in accordance with the design-build process
36 set forth by the agency in the design-build package. All
37 subcontractors bidding on contracts pursuant to this section shall
38 be afforded the protections contained in Chapter 4 (commencing
39 with Section 4100) of Part 1. The design-build entity shall do both
40 of the following:

1 ~~(1) Provide public notice of the availability of work to be~~
2 ~~subcontracted in accordance with the publication requirements~~
3 ~~applicable to the competitive bidding process of the agency.~~

4 ~~(2) Provide a fixed date and time on which the subcontracted~~
5 ~~work will be awarded in accordance with the procedure established~~
6 ~~pursuant to this section.~~

7 ~~(g) The minimum performance criteria and design standards~~
8 ~~established pursuant to paragraph (1) of subdivision (d) shall be~~
9 ~~adhered to by the design-build entity. Any deviations from those~~
10 ~~standards may only be allowed by written consent of the agency.~~

11 ~~(h) The agency may retain the services of a design professional~~
12 ~~or construction project manager, or both, throughout the course of~~
13 ~~the project in order to ensure compliance with this section.~~

14 ~~(i) Contracts awarded pursuant to this section shall be valid until~~
15 ~~the project is completed.~~

16 ~~(j) Nothing in this section is intended to affect, expand, alter,~~
17 ~~or limit any rights or remedies otherwise available at law.~~

18 ~~(k) (1) If the agency elects to award a project pursuant to this~~
19 ~~section, retention proceeds withheld by the agency from the~~
20 ~~design-build entity shall not exceed 5 percent if a performance and~~
21 ~~payment bond, issued by an admitted surety insurer, is required in~~
22 ~~the solicitation of bids.~~

23 ~~(2) In a contract between the design-build entity and the~~
24 ~~subcontractor, and in a contract between a subcontractor and any~~
25 ~~subcontractor thereunder, the percentage of the retention proceeds~~
26 ~~withheld shall not exceed the percentage specified in the contract~~
27 ~~between the agency and the design-build entity. If the design-build~~
28 ~~entity provides written notice to any subcontractor who is not a~~
29 ~~member of the design-build entity, prior to or at the time the bid~~
30 ~~is requested, that a bond may be required and the subcontractor~~
31 ~~subsequently is unable or refuses to furnish a bond to the~~
32 ~~design-build entity, then the design-build entity may withhold~~
33 ~~retention proceeds in excess of the percentage specified in the~~
34 ~~contract between the agency and the design-build entity from any~~
35 ~~payment made by the design-build entity to the subcontractor.~~

36 ~~(l) Each agency that elects to proceed under this section and~~
37 ~~uses the design-build method on a public works project shall submit~~
38 ~~to the Legislative Analyst's Office before December 1, 2014, a~~
39 ~~report containing a description of each public works project~~
40 ~~procured through the design-build process after January 1, 2010,~~

1 and before November 1, 2014. The report shall include, but shall
2 not be limited to, all of the following information:

- 3 (1) ~~The type of project.~~
- 4 (2) ~~The gross square footage of the project.~~
- 5 (3) ~~The design-build entity that was awarded the project.~~
- 6 (4) ~~Where appropriate, the estimated and actual length of time~~
7 ~~to complete the project.~~
- 8 (5) ~~The estimated and actual project costs.~~
- 9 (6) ~~A description of any written protests concerning any aspect~~
10 ~~of the solicitation, bid, proposal, or award of the design-build~~
11 ~~project, including the resolution of the protests.~~
- 12 (7) ~~An assessment of the prequalification process and criteria.~~
- 13 (8) ~~An assessment of the effect of retaining 5-percent retention~~
14 ~~on the project.~~
- 15 (9) ~~A description of the labor force compliance program and an~~
16 ~~assessment of the project impact, where required.~~
- 17 (10) ~~A description of the method used to award the contract. If~~
18 ~~best value was the method, the report shall describe the factors~~
19 ~~used to evaluate the bid, including the weighting of each factor~~
20 ~~and an assessment of the effectiveness of the methodology.~~
- 21 (11) ~~An assessment of the project impact of skilled labor force~~
22 ~~availability.~~
- 23 (12) ~~An assessment of the design-build dollar limits on agency~~
24 ~~projects. This assessment shall include projects where the agency~~
25 ~~wanted to use design-build and was precluded by the dollar~~
26 ~~limitation. This assessment shall also include projects where the~~
27 ~~best value method was not used due to dollar limitations.~~
- 28 (13) ~~An assessment of the most appropriate uses for the~~
29 ~~design-build approach.~~
- 30 (m) (1) ~~In order to comply with paragraph (2) of subdivision~~
31 ~~(a), the State Public Works Board is required to maintain the list~~
32 ~~of agencies that have applied and are eligible to be qualified for~~
33 ~~this authority.~~
- 34 (2) ~~Each agency that is interested in proceeding under the~~
35 ~~authority in this section must apply to the State Public Works~~
36 ~~Board. The application to proceed shall be in writing and contain~~
37 ~~such information that the State Public Works Board may require.~~
- 38 (3) ~~The State Public Works Board shall approve or deny an~~
39 ~~application, in writing, within 90 days of the submission of a~~
40 ~~complete application. The authority to deny an application shall~~

1 only be exercised if the condition set forth in paragraph (2) of
2 subdivision (a) has been satisfied.

3 (4) ~~An agency that has applied for this authorization shall, after~~
4 ~~it determines it no longer is interested in using this authority, notify~~
5 ~~the State Public Works Board in writing within 30 days of its~~
6 ~~determination. Upon notification, the State Public Works Board~~
7 ~~may contact any previous applicants, denied pursuant to paragraph~~
8 ~~(2) of subdivision (a), to inform them of the availability to proceed~~
9 ~~under this section.~~

10 (5) ~~The State Public Works Board may authorize no more than~~
11 ~~10 projects. The board shall not authorize or approve more than~~
12 ~~two projects for any one eligible redevelopment agency that~~
13 ~~submits a completed application.~~

14 (6) ~~The State Public Works Board shall notify the Legislative~~
15 ~~Analyst's Office when 10 projects have been approved.~~

16 (n) ~~On or before January 1, 2015, the Legislative Analyst shall~~
17 ~~report to the Legislature on the use of the design-build method by~~
18 ~~agencies pursuant to this section, including the information listed~~
19 ~~in subdivision (l). The report may include recommendations for~~
20 ~~modifying or extending this section.~~

21 (o) ~~Except as provided in this section, nothing in this act shall~~
22 ~~be construed to affect the application of any other law.~~

23 (p) ~~This section shall remain in effect only until January 1, 2016,~~
24 ~~and as of that date is repealed, unless a later enacted statute, that~~
25 ~~is enacted before January 1, 2016, deletes or extends that date.~~

26 SEC. 12. Chapter 4 (commencing with Section 22160) is added
27 to Part 3 of Division 2 of the Public Contract Code, to read:

28
29 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS
30

31 22160. (a) The Legislature finds and declares that the
32 design-build method of project delivery, using a best value
33 procurement methodology, has been authorized for various
34 agencies that have reported benefits from such projects including
35 reduced project costs, expedited project completion, and design
36 features that are not achievable through the traditional
37 design-bid-build method.

38 (b) It is the intent of the Legislature that the following occur:

(1) This chapter provides general authorization for local agencies to use design-build for projects, excluding projects on the state highway system.

(2) This chapter shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria related to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may entail selection of the lowest priced technically acceptable proposal or selection of the best proposal for a fixed price established by the procuring agency, or it may consist of a tradeoff between price and other specified factors. *involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.*

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(e) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(f) “Local agency” means the following:

1 (1) A city, county, or city and county.

2 (2) A special district that operates wastewater facilities, solid
3 waste management facilities, water recycling facilities, or fire
4 protection facilities.

5 (3) Any transit district, included transit district, municipal
6 operator, included municipal operator, any consolidated agency,
7 as described in Section 132353.1 of the Public Utilities Code, any
8 joint powers authority formed to provide transit service, any county
9 transportation commission created pursuant to Section 130050 of
10 the Public Utilities Code, or any other local or regional agency,
11 responsible for the construction of transit projects.

12 (g) (1) For a local agency defined in paragraph (1) of
13 subdivision (f), “project” means the construction of a building or
14 buildings and improvements directly related to the construction
15 of a building or buildings, county sanitation wastewater treatment
16 facilities, and park recreational facilities, but does not include the
17 construction of other infrastructure, including, but not limited to,
18 streets and highways, public rail transit, or water resources facilities
19 and infrastructure. For a local agency defined in paragraph (1) of
20 subdivision (f) that operates wastewater facilities, solid waste
21 management facilities, or water recycling facilities, “project” also
22 means the construction of regional and local wastewater treatment
23 facilities, regional and local solid waste facilities, or regional and
24 local water recycling facilities.

25 (2) For a local agency defined in paragraph (2) of subdivision
26 (f), “project” means the construction of regional and local
27 wastewater treatment facilities, regional and local solid waste
28 facilities, regional and local water recycling facilities, or fire
29 protection facilities.

30 (3) For a local agency defined in paragraph (3) of subdivision
31 (f), “project” means a transit capital project, but does not include
32 state highway construction or local street and road projects.

33 22162. (a) ~~Notwithstanding~~ *Except as provided in subdivision*
34 *(b), and notwithstanding* any other law, a local agency, with
35 approval of its governing body, may procure design-build contracts
36 for public works projects in excess of one million dollars
37 (\$1,000,000), awarding the contract either the low bid or the best
38 value, provided that this article shall not apply to any projects on
39 the state highway system.

1 (b) For the acquisition and installation of technology
2 applications or surveillance equipment designed to enhance safety,
3 disaster preparedness, and homeland security efforts, there shall
4 be no cost threshold and the local agency described in paragraph
5 (3) of subdivision (f) of Section 22161 may award the contract to
6 the lowest responsible bidder or by using the best value method.

7 ~~(b)~~

8 (c) The local agency shall develop guidelines for a standard
9 organizational conflict-of-interest policy, consistent with applicable
10 law, regarding the ability of a person or entity, that performs
11 services for the local agency relating to the solicitation of a
12 design-build project, to submit a proposal as a design-build entity,
13 or to join a design-build team. This conflict-of-interest policy shall
14 apply to each local agency entering into design-build contracts
15 authorized under this article.

16 22164. The procurement process for the design-build projects
17 shall progress as follows:

18 (a) (1) The local agency shall prepare a set of documents setting
19 forth the scope and estimated price of the project. The documents
20 may include, but need not be limited to, the size, type, and desired
21 design character of the project, performance specifications covering
22 the quality of materials, equipment, workmanship, preliminary
23 plans or building layouts, or any other information deemed
24 necessary to describe adequately the local agency's needs. The
25 performance specifications and any plans shall be prepared by a
26 design professional who is duly licensed and registered in
27 California.

28 (2) The documents shall not include a design-build-operate
29 contract for any project. *The documents, however, may include*
30 *operations during a training or transition period but shall not*
31 *include long-term operations for any project.*

32 (b) Based on the documents prepared under subdivision (a), the
33 local agency shall prepare and issue a request for qualifications in
34 order to prequalify or short-list the design-build entities whose
35 proposals shall be evaluated for final selection. The request for
36 qualifications shall include, but need not be limited to, the
37 following elements:

38 (1) Identification of the basic scope and needs of the project or
39 contract, the expected cost range, the methodology that will be
40 used by the local agency to evaluate proposals, the procedure for

1 final selection of the design-build entity, and any other information
2 deemed necessary by the local agency to inform interested parties
3 of the contracting opportunity.

4 (2) ~~(A)~~ Significant factors that the local agency reasonably
5 expects to consider in evaluating qualifications, including technical
6 design and construction ~~expertise, skilled labor force availability,~~
7 *expertise*, acceptable safety record, and all other nonprice-related
8 factors.

9 ~~(B) For purposes of subparagraph (A), skilled labor force~~
10 ~~availability shall be deemed satisfied by the existence of an~~
11 ~~agreement with a registered apprenticeship program, approved by~~
12 ~~the California Apprenticeship Council, that has graduated at least~~
13 ~~one apprentice in each of the preceding five years. This graduation~~
14 ~~requirement shall not apply to programs providing apprenticeship~~
15 ~~training for any craft that was first deemed by the federal~~
16 ~~Department of Labor and the Department of Industrial Relations~~
17 ~~to be an apprenticeable craft within the five years prior to the~~
18 ~~effective date of this article.~~

19 (3) A standard template request for statements of qualifications
20 prepared by the local agency. In preparing the standard template,
21 the local agency may consult with the construction industry, the
22 building trades and surety industry, and other local agencies
23 interested in using the authorization provided by this article. The
24 template shall require the following information:

25 (A) If the design-build entity is a privately held corporation,
26 limited liability company, partnership, or joint venture, a listing
27 of all of the shareholders, partners, or members known at the time
28 of statement of qualification submission who will perform work
29 on the project.

30 (B) Evidence that the members of the design-build team have
31 completed, or demonstrated the experience, competency, capability,
32 and capacity to complete projects of similar size, scope, or
33 complexity, and that proposed key personnel have sufficient
34 experience and training to competently manage and complete the
35 design and construction of the project, and a financial statement
36 that ensures that the design-build entity has the capacity to
37 complete the project.

38 (C) The licenses, registration, and credentials required to design
39 and construct the project, including, but not limited to, information

1 on the revocation or suspension of any license, credential, or
2 registration.

3 (D) Evidence that establishes that the design-build entity has
4 the capacity to obtain all required payment and performance
5 bonding, liability insurance, and errors and omissions insurance.

6 (E) Information concerning workers' compensation experience
7 history and a worker safety program.

8 (F) If the proposed design-build entity is a corporation, limited
9 liability company, partnership, joint venture, or other legal entity,
10 a copy of the organizational documents or agreement committing
11 to form the organization.

12 (G) An acceptable safety record. A proposer's safety record
13 shall be deemed acceptable if its experience modification rate for
14 the most recent three-year period is an average of 1.00 or less, and
15 its average total recordable injury or illness rate and average lost
16 work rate for the most recent three-year period does not exceed
17 the applicable statistical standards for its business category or if
18 the proposer is a party to an alternative dispute resolution system
19 as provided for in Section 3201.5 of the Labor Code.

20 (4) (A) The information required under this subdivision shall
21 be certified under penalty of perjury by the design-build entity and
22 its general partners or joint venture members.

23 (B) Information required under this subdivision that is not
24 otherwise a public record under the California Public Records Act
25 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
26 Title 1 of the Government Code) shall not be open to public
27 inspection.

28 *(c) A design-build entity shall not be prequalified or shortlisted*
29 *unless the entity provides an enforceable commitment to the local*
30 *agency that the entity and its subcontractors at every tier will use*
31 *a skilled and trained workforce to perform all work on the project*
32 *or contract that falls within an apprenticeable occupation in the*
33 *building and construction trades.*

34 *(1) For purposes of this subdivision:*

35 *(A) "Apprenticeable occupation" means an occupation for*
36 *which the chief had approved an apprenticeship program pursuant*
37 *to Section 3075 of the Labor Code prior to January 1, 2014.*

38 *(B) "Skilled and trained workforce" means a workforce that*
39 *meets all of the following conditions:*

1 (i) All the workers are either skilled journeypersons or
2 apprentices registered in an apprenticeship program approved by
3 the Chief of the Division of Apprenticeship Standards.

4 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
5 journey persons employed to perform work on the contract or
6 project by the entity and each of its subcontractors at every tier
7 are graduates of an apprenticeship program for the applicable
8 occupation that was either approved by the Chief of the Division
9 of Apprenticeship Standards pursuant to Section 3075 of the Labor
10 Code or located outside California and approved for federal
11 purposes pursuant to the apprenticeship regulations adopted by
12 the federal Secretary of Labor.

13 (II) As of January 1, 2017, at least 30 percent of the skilled
14 journey persons employed to perform work on the contract or
15 project by the entity and each of its subcontractors at every tier
16 are graduates of an apprenticeship program for the applicable
17 occupation that was either approved by the Chief of the Division
18 of Apprenticeship Standards pursuant to Section 3075 of the Labor
19 Code or located outside California and approved for federal
20 purposes pursuant to the apprenticeship regulations adopted by
21 the federal Secretary of Labor.

22 (III) As of January 1, 2018, at least 40 percent of the skilled
23 journey persons employed to perform work on the contract or
24 project by the entity and each of its subcontractors at every tier
25 are graduates of an apprenticeship program for the applicable
26 occupation that was either approved by the Chief of the Division
27 of Apprenticeship Standards pursuant to Section 3075 of the Labor
28 Code or located outside California and approved for federal
29 purposes pursuant to the apprenticeship regulations adopted by
30 the federal Secretary of Labor.

31 (IV) As of January 1, 2019, at least 50 percent of the skilled
32 journey persons employed to perform work on the contract or
33 project by the entity and each of its subcontractors at every tier
34 are graduates of an apprenticeship program for the applicable
35 occupation that was either approved by the Chief of the Division
36 of Apprenticeship Standards pursuant to Section 3075 of the Labor
37 Code or located outside California and approved for federal
38 purposes pursuant to the apprenticeship regulations adopted by
39 the federal Secretary of Labor.

1 (V) As of January 1, 2020, at least 60 percent of the skilled
2 journey persons employed to perform work on the contract or
3 project by the entity and each of its subcontractors at every tier
4 are graduates of an apprenticeship program for the applicable
5 occupation that was either approved by the Chief of the Division
6 of Apprenticeship Standards pursuant to Section 3075 of the Labor
7 Code or located outside California and approved for federal
8 purposes pursuant to the apprenticeship regulations adopted by
9 the federal Secretary of Labor.

10 (iii) For an apprenticeable occupation in which no
11 apprenticeship program had been approved by the chief prior to
12 January 1, 1995, up to one-half of the graduation percentage
13 requirement in subclause (I) of clause (ii) may be satisfied by
14 skilled journeypersons who commenced working in the
15 apprenticeable occupation prior to the chief's approval of an
16 apprenticeship program for that occupation in the county in which
17 the project is located.

18 (C) "Skilled journey person" means a worker who either:

19 (i) Graduated from an apprenticeship program for the
20 applicable occupation that was approved by the chief or located
21 outside California and approved for federal purposes pursuant to
22 the apprenticeship regulations adopted by the federal Secretary
23 of Labor.

24 (ii) Has at least as many hours of on-the-job experience in the
25 applicable occupation as would be required to graduate from an
26 apprenticeship program for the applicable occupation that is
27 approved by the chief.

28 (2) An entity's commitment that a skilled and trained workforce
29 will be used to perform the project or contract may be established
30 by any of the following:

31 (A) The entity's agreement with the local agency that the entity
32 and its subcontractors at every tier will comply with the
33 requirements of this subdivision and that the entity will provide
34 the local agency with evidence, on a monthly basis while the project
35 or contract is being performed, that the entity and its
36 subcontractors are complying with the requirements of this
37 subdivision.

38 (B) If the local agency has entered into a project labor
39 agreement that will bind all contractors and subcontractors
40 performing work on the project or contract and that includes the

1 *requirements of this subdivision, the entity's agreement that it will*
2 *become a party to that project labor agreement.*

3 *(C) Evidence that the entity has entered into a project labor*
4 *agreement that includes the requirements of this subdivision and*
5 *that will bind the entity and all its subcontractors at every tier*
6 *performing the project or contract.*

7 ~~(e)~~

8 *(d) Based on the documents prepared as described in subdivision*
9 *(a), the local agency shall prepare a request for proposals that*
10 *invites prequalified or short-listed entities to submit competitive*
11 *sealed proposals in the manner prescribed by the local agency.*
12 *The request for proposals shall include, but need not be limited*
13 *to, the following elements:*

14 *(1) Identification of the basic scope and needs of the project or*
15 *contract, the estimated cost of the project, the methodology that*
16 *will be used by the local agency to evaluate proposals, whether*
17 *the contract will be awarded on the basis of low bid or best value,*
18 *and any other information deemed necessary by the local agency*
19 *to inform interested parties of the contracting opportunity.*

20 *(2) Significant factors that the local agency reasonably expects*
21 *to consider in evaluating proposals, including, but not limited to,*
22 *cost or price and all nonprice-related factors.*

23 *(3) The relative importance or the weight assigned to each of*
24 *the factors identified in the request for proposals.*

25 *(4) Where a best value selection method is used, the local agency*
26 *may reserve the right to request proposal revisions and hold*
27 *discussions and negotiations with responsive proposers, in which*
28 *case the local agency shall so specify in the request for proposals*
29 *and shall publish separately or incorporate into the request for*
30 *proposals applicable procedures to be observed by the local agency*
31 *to ensure that any discussions or negotiations are conducted in*
32 *good faith.*

33 ~~(d)~~

34 *(e) For those projects utilizing low bid as the final selection*
35 *method, the competitive bidding process shall result in lump-sum*
36 *bids by the prequalified or short-listed design-build entities, and*
37 *awards shall be made to the design-build entity that is the lowest*
38 *responsible bidder.*

39 ~~(e)~~

(f) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the local agency:

(A) Price, *unless a stipulated sum is specified*.

(B) Technical design and construction expertise.

(C) Life-cycle costs over 15 or more years.

(2) Pursuant to subdivision ~~(e)~~, (d), the local agency may hold discussions or negotiations with responsive proposers using the process articulated in the local agency's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided, provided that no more than three proposers are required to be ranked.

(4) The award of the contract shall be made to the responsible design-build entity whose proposal is determined by the local agency to have offered the best value to the public.

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the local agency shall publicly announce its award, identifying the design-build entity to which the award is made, along with a ~~written decision supporting its contract award and stating~~ *statement regarding* the basis of the award.

(6) ~~The written decision supporting~~ *statement regarding* the local agency's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

22165. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the local agency, and issued by a California admitted surety. The amount of the payment bond shall not be less than the amount of the performance bond.

(b) The design-build contract shall require errors and omissions insurance coverage for the design elements of the project.

(c) The local agency shall develop a standard form of payment and performance bond for its design-build projects.

22166. (a) The local agency, in each design-build request for proposals, may identify specific types of subcontractors that must

1 be included in the design-build entity statement of qualifications
2 and proposal. All construction subcontractors that are identified
3 in the proposal shall be afforded all the protections of Chapter 4
4 (commencing with Section 4100) of Part 1.

5 (b) Following award of the design-build contract, the
6 design-build entity shall proceed as follows in awarding
7 construction subcontracts with a value exceeding one-half of 1
8 percent of the contract price allocable to construction work:

9 (1) Provide public notice of availability of work to be
10 subcontracted in accordance with the publication requirements
11 applicable to the competitive bidding process of the local agency,
12 including a fixed date and time on which qualifications statements,
13 bids, or proposals will be due.

14 (2) Establish reasonable qualification criteria and standards.

15 (3) Award the subcontract either on a best value basis or to the
16 lowest responsible bidder. The process may include prequalification
17 or short-listing. The foregoing process does not apply to
18 construction subcontractors listed in the original proposal.
19 Subcontractors awarded construction subcontracts under this
20 subdivision shall be afforded all the protections of Chapter 4
21 (commencing with Section 4100) of Part 1.

22 22167. (a) If the local agency elects to award a project pursuant
23 to this article, retention proceeds withheld by the local agency
24 from the design-build entity shall not exceed 5 percent if a
25 performance and payment bond, issued by an admitted surety
26 insurer, is required in the solicitation of bids.

27 (b) In a contract between the design-build entity and a
28 subcontractor, and in a contract between a subcontractor and any
29 subcontractor thereunder, the percentage of the retention proceeds
30 withheld may not exceed the percentage specified in the contract
31 between the local agency and the design-build entity. If the
32 design-build entity provides written notice to any subcontractor
33 that is not a member of the design-build entity, prior to or at the
34 time the bid is requested, that a bond may be required and the
35 subcontractor subsequently is unable or refuses to furnish a bond
36 to the design-build entity, then the design-build entity may withhold
37 retention proceeds in excess of the percentage specified in the
38 contract between the local agency and the design-build entity from
39 any payment made by the design-build entity to the subcontractor.

1 22168. Nothing in this article affects, expands, alters, or limits
2 any rights or remedies otherwise available at law.

3 SEC. 13. Due to the unique circumstances of the Marin
4 Healthcare District, the Legislature hereby finds and declares that
5 a general statute cannot be made applicable within the meaning
6 of Section 16 of Article IV of the California Constitution.
7 Therefore, the special legislation contained in Section 4 of this act
8 is applicable only to the Marin Healthcare District.

9 SEC. 14. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.